



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
)  
) ISCR Case No. 23-01964  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: *Pro Se*

08/29/2024

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**Decision**

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LOKEY ANDERSON, Darlene D., Administrative Judge

**Statement of the Case**

On December 14, 2023, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines B and C. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on January 8, 2024, and requested a hearing before an administrative judge. The case was assigned to me on March 18, 2024. The Defense Office of Hearings and Appeals issued a notice of hearing on April 22, 2024, and the hearing was convened as scheduled on June 13, 2024. The Government offered two exhibits, referred to as Government Exhibits 1 and 2, which were admitted without objection. The Applicant offered sixteen exhibits, referred to as Applicant's Exhibits A through P, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on June 24, 2024.

**Procedural Rulings**

The Government requested I take administrative notice of certain facts relating to the country of Australia. Department Counsel provided a 2-page summary of the facts, supported by one Government document pertaining to Australia, identified as HE 1. The documents provide elaboration and context for the summary. Applicant had no objection. I took administrative notice of the facts included in the U.S. Government reports. They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

### **Findings of Fact**

Applicant admitted each of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 59 years old and divorced with one adult son. He has a high school diploma, two years of technical school, various Certifications, and military training. He currently holds the position of Aircraft Maintenance Engineer for a company in Australia. He is applying for a position with a U.S. defense contractor as an Aircraft Mechanic. A security clearance is needed in connection with this employment.

Applicant has lived and worked in Australia for the past twenty years. He is applying for a position with a U.S. defense contractor, who has a logistics support contract with the United States military. The work assignment is located on a military Air base in South Korea. If Applicant is hired for the position, he will be working in South Korea as an Aircraft Mechanic. Applicant explained that the reason he applied for this job is because he would eventually like to return to the United States, and this is one way of possibly achieving that goal.

To provide some background, Applicant joined the United States Air Force Reserves in September 1985. He was placed on active duty for about a year and a half and was then returned to reserve duty pursuant to his contract. Due to vast military base closures, he was transferred to the California Air National Guard and was frequently moved to different base assignments for work. He completed his military service in 1990, with an honorable discharge. (Appellant's Exhibit A) From 1990 to 1993, he worked for a U.S. defense contractor as an Aircraft Mechanic based in California whose special assignments included travel to Saudi Arabia. In 1993, while still working for a U.S. defense contractor, he was assigned to work for the U.S. military in Japan. While in Japan, and between contracts on the job, with time off from work, he traveled to visit a friend living in Australia. While in Australia he met a woman with whom he entered into a romantic relationship. She is an Australian citizen. The relationship developed, and the Australian woman moved to Japan to live with the Applicant. She and the Applicant eventually married and had a son. (Tr. p. 45.) During her pregnancy, between 1998-1999, she returned to Australia to obtain health care for her and her unborn son, since she had medical insurance in Australia, which is an entitlement given to its citizens. (Tr. p. 46.) Applicant's son was born in Australia in February 1999. When Applicant's son was two or three months old, he and his mother traveled back to Japan to help pack up things to move to Australia. While in Japan, Applicant registered his son as a U.S. citizen. (Applicant's Exhibit P.)

In late May 1999, Applicant relocated to Australia to join his family there. Applicant explained that because he easily obtained employment in Australia, he stayed there. At that time, he was tired of moving around and simply wanted a stable environment for his family. He worked several jobs for short periods until he found a stable position with an electronic company in Australia. He worked there for about eleven years.

In 2004, Applicant became an Australian citizen for the sole purpose of being able to travel freely in and out of the country without needing a visa. Applicant explained that he also voted in Australian elections only because it was mandatory, and he would be subject to a fine if he did not vote. In 2006, Applicant and his wife divorced.

Applicant's son is now 24 years old. Although he is a resident of Australia, he is also a U.S. citizen. He is currently finishing a plumbing apprenticeship and plans to remain in Australia to work.

Applicant has a girlfriend from Vietnam who currently resides with him in Australia. She is an Australian citizen and has been in Australia since 2007. She works as a women's clothing designer and has been working for the same company for seven years. She plans on relocating with the Applicant to South Korea, if he gets the new position. (Tr. pp. 62 and 68.)

Applicant owns three properties in Australia. He purchased a house, an apartment, and a block of vacant land. His son will be able to live in one or both of the properties. Applicant is in the process of selling one of the properties and is trying to reduce his financial footprint in Australia, as his goal is to move to South Korea for the new job. Applicant maintains a bank account in Australia for the sole purpose of handling his daily banking needs. (Tr. p. 64.) This account has about \$20,000 in it. Applicant also has an account with an American bank that has about \$20,000 in it.

Applicant has two sisters and a nephew who are citizens and residents of the United States. Applicant and his son have traveled a number of times to the United States to visit Applicant's sisters. Applicant has traveled to the United States every year or every other year. (Tr. p. 53.)

Applicant admitted that since 1993, he has qualified for the foreign earned income tax exclusion because he is a bona fide resident of a foreign country. When he left California in 1993, and moved to Japan for work, he became eligible. He has not paid any federal income taxes to the United States since 1993. Applicant indicates that he has not earned any U.S. dollars since 1993, only foreign income.

Applicant currently receives health insurance through the Australian government. He stated that he will not utilize this benefit if he is hired for the job in South Korea. If that occurs, he will be sponsored by the U.S. military in South Korea and will rely on their medical facilities. Upon retirement, Applicant will be eligible to receive an Australian Government Pension which is called "a superannuation fund" which consists of monies previously contributed into an investment fund by his employers for retirement purposes. (Tr. pp. 72-73.) It works something like an IRA Applicant stated that he will not continue contributing to the superannuation fund if he obtains his security clearance. Instead, he

will pay U.S. social security taxes and will rely on it for retirement. Applicant is also entitled to receive an age pension from the Australian government based on his income and asset limits.

Applicant stated that he will qualify for Social Security benefits in the United States based upon his previous work there. He believes he has earned enough quarters to qualify. (Tr. p. 56.) He stated that he will not receive a military pension as he does not qualify to receive it.

Applicant stated that he moved to Australia for a particular purpose and that was to help raise his son. He has now accomplished his goal, as his son is now grown. Applicant believes it is his time to do what he wants to do, which is to eventually move back to the United States. He has been in Australia for more than twenty years. He is not Australian, and he has no cultural ties to Australia. He applied for the position in South Korea in hopes that it will eventually help him get back to the United States to work and live. He explained that the job in South Korea could easily end up changing and be in the United States. The airplanes they work on are controlled by the U.S. military command and could be relocated wherever they are needed. (Tr. p. 61)

A letter from the Site Lead at the U.S. Air Force base in South Korea who manages the site and supervises technical staff, indicates that he personally recommends the Applicant for a position at his site. He states that Applicant's qualifications are exemplary, specifically his abilities, character, and relationship with the Air Force that make him a great asset to the company. Pending security clearance approval, Applicant will be under his direct supervision on a daily basis. (Applicant's Exhibit K.)

A letter from a previous work colleague and long-time friend, who has known the Applicant for the past twenty-five years, indicates that Applicant is professional and trustworthy. They met in Australia many years ago. Although Applicant's colleague returned to the U.S. in 2013, to live and work, he and the Applicant have remained close friends. He states that Applicant is a man of high integrity, loyalty, and reliability. He highly recommends Applicant for a security clearance. (Applicant's Exhibit J.)

Applicant submitted several articles that show the close and ongoing relationship and deep security cooperation between the United States and Australia. In an article from Voice of America dated July 29, 2023, the Australian Defense Minister told reporters following the conclusion of the 33rd annual Australia-United States Ministerial Consultations in Brisbane, Australia that, "Australia at this moment has no better friend than America". This statement sums up the Applicant's position that Australia, including its civilian and military personnel, do not pose a security risk to the United States. (Applicant's Exhibit P.)

In assessing the heightened risk created as a result of a security clearance, the Applicant's ties to a hostile country are important. However, even countries friendly to the United States have attempted to gain unauthorized access to classified information. Under the particular facts of this case, I have taken administrative notice of the information provided concerning the country of Australia. Australia is a vital ally, partner, and friend of the United States. Our countries maintain a robust relationship underpinned by shared

democratic values, common interests, and cultural affinities. Economic, academic, and people-to-people ties are vibrant and strong. Our partnership promotes peace and stability in the Indo-Pacific region and around the world. Our bilateral defense ties and cooperation are exceptionally close. U.S. forces and Australian forces have fought side-by-side in every major conflict since World War I. The United States and Australia engage in a partnership to maintain freedom of navigation, overflight, and other lawful use of the sea. The two countries also have agreements on health cooperation space, science and technology, emergency management cooperation, social security, and other areas to ensure and promote the highest levels of interoperability. The United States and Australia marked the 80th anniversary of diplomatic relations in 2020.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible

extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO" 12968, Section 3.1 (b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B, Foreign Influence**

¶ 6: The security concern relating to the guideline for Foreign Influence is set out in AG

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

¶ 7. Four are potentially applicable in this case:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

(e) shared living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the

individual to a heightened risk of foreign influence or exploitation or person conflict of interest.

Applicant's foreign contacts include his son and girlfriend who are citizens and residents of Australia. Applicant was only in Australia to raise his son and he has successfully done so. Applicant's son is a U.S. citizen because of the Applicant who registered him as such when he was only an infant. His son is training to be a plumber and upon completion, he will enjoy a lucrative job in Australia. Applicant's girlfriend, who is from Vietnam, is a women's dress designer, and has worked for her company for seven years. She plans to move to South Korea with the Applicant if he is hired for the position there. Neither Applicant's son or his girlfriend have any interest in or knowledge of Applicant's security clearance or his work product. They are either in school or are established professionals in their own right. They clearly do not need the Applicant for upward mobility or financial support. Based upon the evidence presented, they do not threaten or influence Applicant's native-born United States citizenship.

Applicant's foreign financial assets which include his real properties, a bank account, health insurance, and pension benefits do not make him vulnerable to divided allegiance or pose a risk to the national security of the United States. What this demonstrates is that Applicant has worked hard during his twenty-plus years in Australia and has been financially responsible. He has paid into the Australian economy for many years and is eligible to receive the benefits he is entitled to from the Australian government. Since he has also been previously employed in the U.S. and has paid into our retirement system, he believes that he also meets the eligibility requirements to receive U.S. Social Security benefits.

Under the particular circumstances here, the risk-benefit analysis is applicable, and these foreign contacts and foreign financial assets do not pose a significant security risk to the U.S. government. There is nothing here that may manipulate or induce the Applicant to help a foreign person or government in a way that is inconsistent with the U.S. interests. Applicant is a proud American-born citizen. He has worked hard serving our country to accomplish our mission. He has also worked in Australia for twenty years and contributed to their economy. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 including:

(a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the

individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and"

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate or pressure the individual

Applicant is a native-born U.S. citizen and under the circumstances, his foreign relationships and foreign assets do not demonstrate a divided allegiance. There is no apparent conflict of interest that could be used effectively to influence, manipulate or pressure the Applicant to act against the interests of the U.S. Applicant is applying for a position with the U.S. military in South Korea with hopes to eventually move to the United States. He has two sisters and a nephew are all citizens and residents of the U.S. If he obtains the employment he is seeking, although the position is in South Korea, he will be sponsored by the US government. He will be paying social security taxes in the U.S. economy. He will receive health insurance through the U.S. military, and he will be contributing to his retirement pension in the United States. Full mitigation under AG ¶ 8(a), 8(b), and 8(f), has been established.

### **Guideline C, Foreign Preference**

¶ 9: The security concern relating to the guideline for Foreign Influence is set out in AG

When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he may provide information or make decisions that are harmful to the interests of the United States. Foreign involvement raises concerns about an individual's judgement, reliability, and trustworthiness when it is in conflict with U.S. national interests or when the individual acts to conceal it. By itself: the fact that a U.S. citizen is also a citizen of another country is not disqualifying without an objective showing of such conflict or attempt at concealment. The same is true for a U.S. citizen's exercise of any right or privilege of foreign citizenship and any action to acquire or obtain recognition of a foreign citizenship.

¶ 10. The guideline notes several conditions that could raise security concerns under AG ¶ 10. One is potentially applicable in this case:

(a) applying for and/or acquiring citizenship in any other country.

AG ¶ 11 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 11 including:

(a) the foreign citizenship is not in conflict with U.S. national security interests;

(c) the individual has expressed a willingness to renounce the foreign citizenship that is in conflict with U.S. national security interests;

(e) the exercise of the entitlements or benefits of foreign citizenship does not present a national security concern; and

(f) the foreign preference, if detected, involved a foreign country, entity, or association that poses a low national security risk.

Applicant only became an Australian citizen for the sole purpose of being able to travel freely in and out of the country without needing a visa. He has shown no foreign preference for Australia over the U.S. In fact, he has expressed a willingness to renounce his foreign citizenship if it is in conflict with U.S. national security interests. He also indicates that he will forgo any benefits received by the foreign citizenship. Applicant stated that he would refrain from obtaining a foreign passport if he would have known that it would might jeopardize his chances of obtaining a security clearance. Most importantly and overriding here is that Australia is a strong ally of the United States.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guidelines C and B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant's Australian contacts pose no security risk to the U.S. government. Applicant is a hard working dedicated American, who began his working career as a member of the U.S. Armed Forces. For the past twenty plus years, he has lived and worked in Australia to raise his son. He has accomplished this task and is now focused

on returning to his country of preference which is to work for the U.S. government. With that, he is also trying to return to America to live out the rest of his life.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Foreign Preference and Foreign Influence security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline B:	FOR APPLICANT
Subparagraphs 1.a. through 1.g.	For Applicant
Paragraph 2, Guideline C:	FOR APPLICANT
Subparagraphs 2.a. through 2.c.	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant national security eligibility and a security clearance. Eligibility for access to classified information is granted.

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Darlene Lokey Anderson  
Administrative Judge